



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

SDMS Document ID



2035043

March 6, 2001

Ref: 8ENF-T

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

David H. Patrick, Esq.
Environmental and Regulatory Attorney
The Pepsi Bottling Group, Inc.
1 Pepsi Way
Mail Drop 6S/668
Somers, NY 10589

Re: First Request For Information
Pursuant To Section 104 of CERCLA
For The Vasquez Boulevard/I-70 Site
Denver, CO

Dear Mr. Patrick:

This letter seeks your cooperation in providing information and documents that may contribute to EPA's understanding in regard to activities, materials and parties that may have contributed to contamination at the Vasquez Boulevard/I-70 Site (Site). As you may be aware, this Site includes all or portions of several northeast Denver, CO neighborhoods; including Elyria, Swansea, Cole, Clayton and south Globeville. Arsenic, lead, cadmium and zinc contamination has been studied by the Environmental Protection Agency (EPA), working in cooperation with the Colorado Department of Public Health & Environment (CDPHE).

Historically, the Site was a major smelting center for the Rocky Mountain West. Three large smelters (the Globe Plant, Omaha & Grant Smelter and Argo Smelter (See Enclosed Map)) operated in the area. Preliminary investigation by EPA has determined that The Pepsi Bottling Group (PBG) and/ or its predecessors-in-interest owns or formerly owned a portion of the property upon which the Omaha & Grant Smelter operated or where wastes from the smelting operations may have come to be located. The Omaha & Grant Smelter facility is believed to have included approximately 50 acres south of the current Denver Coliseum and continuing southward near 42nd Avenue and Vincent Street (another description placed the smelter stack on 41st Avenue between Chestnut and Delgany Streets). Pursuant to the authority of Section 104 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9604, as amended, you are hereby requested to respond to the Information Request set



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forth in Enclosure 1, attached hereto.

The Site was placed on the EPA Superfund National Priorities List on July 22, 1999. EPA has to date conducted an emergency response action which removed soil from 51 residential properties contaminated with high levels of arsenic and lead and remedial studies for both the residential soils and the historic location of the Omaha & Grant Smelter are ongoing. For additional information regarding site cleanup, you may review materials which are maintained at the EPA Superfund Records Center at 999 18th Street, Suite 500, Denver, CO. While EPA seeks your voluntary cooperation in this investigation, compliance with this Information Request is required by law. We encourage you to give this matter your prompt attention and that you provide a complete and truthful response to this Information Request no later than April 6, 2001. Failure to provide a complete and truthful response to this Information Request may subject you to civil or criminal penalties under federal law. Instructions for completing this Information Request are included in Enclosure 1. If you make a claim of confidentiality for any of the information you submit to EPA, you must prove that claim, and must separately address the points outlined in Enclosure 1, for each document.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501 et seq.

Your response to this Information Request should be mailed to:

Dawn Tesorero, Technical Enforcement Program
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466

If you have questions in regard to this Information Request, please contact Ms. Tesorero at (303)312-6883. Please direct legal questions to Ms. Nancy A. Mangone, Legal Enforcement Program at (303)312-6903.

Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Sharon Kercher", with a long horizontal flourish extending to the right.

Sharon Kercher
Program Director
Office of Enforcement Compliance
and Environmental Justice

Enclosures

cc: Bonnie Lavelle, 8EPR-SR
Marc Herman, 8EPR-SR
Dawn Tesorero, 8ENF-T
Nancy A. Mangone, 8ENF-L
Jonathan H. Steeler, Esq.

ENCLOSURE 1

VASQUEZ BOULEVARD/ I-70 SITE

FIRST INFORMATION REQUEST

Instructions

1. Answer Every Question Completely. A separate response must be made to each question set forth in this Information Request. Incomplete, evasive, or ambiguous answers shall constitute failure to respond to this Information Request and may subject you to penalties. For each question contained in this letter, if information responsive to this information request is not in your possession, custody or control, please identify the person(s) from whom such information may be obtained.
2. Number Each Answer. Please indicate at the beginning of each answer the number of the question to which the answers corresponds. Please type or print clearly.
3. Provide the Best Information Available. Provide responses to the best of Respondent's ability, even if the information sought was never put down in writing or if the written documents are no longer available. You should seek out responsive information from current and former employees/agents. Submission of cursory responses when other responsive information is available to the Respondent will be considered non-compliance with this Information Request.
4. Identify Sources of Answers. For each question, please identify all documents consulted (See Definitions) all the persons and documents you relied on in producing your answers.
5. Submit Documents with labels Keyed to Question. For each question, please identify all documents consulted in the preparation of the answer. If for any reason you are withholding any documents that may be responsive to this Information Request, identify the document(s) and state the basis for withholding the document(s).
6. Continuing Obligation to Provide/Correct Information. If additional information or documents become known or available to you after you respond to this request, EPA hereby requests pursuant to CERCLA Section 104(e) that you supplement your response to EPA.
7. Complete a Notarized Certificate. You are required to complete a Notarized Certificate that certifies that the information you are providing in response to this Information Request is true, accurate, and complete. A sample format is included in Enclosure 2.

8. **Confidential Information.** The information requested herein must be provided even though the Respondent may contend that it includes possibly confidential information or trade secrets. You may, if you desire, assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e) (7) (E) and (F) of CERCLA, as amended by SARA, 42 U.S.C. 9604(e) (7) (E) and (F), Section 3007(b) or RCRA, 42 U.S.C. 6927 (b), and 40 CFR 2.203 (b), by attaching to such information at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," or "proprietary" or "company confidential." Information covered by such a claim will be disclosed by EPA only to the extent, and only by means of the procedures set forth in 40 C.F.R. Part 2, 41 Fed. Reg. 36,902 (1976) (amended at 43 Fed. Reg. 40,000 (1978), and 50 Fed. Reg. 51,661 (1985)). If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you. You should read the above cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim. To prove your claim of confidentiality, each document must separately address the following points:

1. The portion of the information alleged to be entitled to confidential treatment;
2. The period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
3. Measures taken by you to guard against the undesired disclosure of the information to others;
4. The extent to which the information has been disclosed to others, and precautions taken in connection therewith;
5. Pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and
6. Whether you assert that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects.

9. **Disclosure to EPA Contractor.** Information which you submit in response to this Information Request may be disclosed by EPA to authorized representatives of the United States, pursuant to 40 C.F.R. 2.310(h), even if you assert that all or part of it is confidential business information. Please be advised that EPA intends to disclose all responses to this Information Request to one or more of its private contractor list Contractors for the purpose of organizing or analyzing the information contained in the responses to this Information Request. If you are submitting information, which you assert is entitled to treatment as confidential business information, you may comment on this intended disclosure within (14) business days of

receiving this Information Request.

Definitions

The following definitions shall apply to the following words as they appear in this Enclosure 1:

1. The term "you" or "Respondent" shall mean the addressee of this Request, the addressee's officers, managers, employees, contractors, trustees, partners, successors, assigns, agents, subsidiaries, affiliates and predecessors-in-interest.
2. The term "person" shall have the same definition as in Section 101(21) of CERCLA: an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.
3. The terms "the Site" or "the Facility" for purposes of this Information Request shall, include the sites of the former and current Omaha & Grant Smelter, the Argo Smelter (also known as Boston and Colorado Smelter) and the Globe Smelter and additionally shall include neighborhoods surrounding these smelter operations.
4. The term "hazardous substance" shall have the same definition as that contained in Section 101(14) of CERCLA and includes any mixtures of such hazardous substances with any other substances, including petroleum products.
5. The term "pollutant or contaminant" shall have the same definition as that contained in Section 101(33) of CERCLA, and includes any mixtures of such pollutants and contaminants with any other substances, including petroleum products.
6. The term "hazardous waste" shall have the same definition as that contained in Section 1004(5) of RCRA.
7. The term "solid waste" shall have the same definition as that contained in Section 1004 (27) of RCRA.
8. The term "materials" shall mean all substances that have been generated, treated, stored, or disposed of or otherwise handled at or transported to the Site, including but not limited to all hazardous substances, pollutants and contaminants, hazardous wastes and solid wastes, as defined above.
9. The term "hazardous materials" shall mean all hazardous substances, pollutants or contaminants, and hazardous wastes, as defined above.
10. The term "identify" means, with respect to a natural person, to set forth the

person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

11. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship) to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any and a brief description of its business.

12. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number if any (invoice or purchase order number), and the substance or subject matter.

13. The term "release" has the same definition as that contained in Section 101(22) of CERCLA, 42 U.S.C. 9601 (22), and includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any hazardous substances or pollutant or contaminant.

14. The term "document" and "documents" shall mean any writing, recording or stored information including, but not limited to, hard copy and computer document files.

15. The term "arrangement" means every separate contract or other agreement between two or more persons.

16. The term "transaction" or "transact" mean any sale, transfer, giving, delivery, change in ownership, or change in possession.

17. The term "property interest" means any interest in property including an easement or right of way, any interest in the rental of property, any interest in a corporation that owns or rents or owned and rented property, and any interest as either the trustee or beneficiary or trust that owns or rents property.

QUESTIONS

1. Provide a legal description of the property or properties The American Smelting and Refining Company (ASARCO), the City and County of Denver (City) or any other party sold, exchanged or transferred to you upon which the former Omaha & Grant Smelter facility operated or its wastes came to be located.

2. Provide copies of all documents evidencing or relating to the property or properties identified in response to #1 above (Include copies of sales, purchase agreements, deeds, easements or exchange agreements, etc.).

3. Describe the period(s) Respondent held the property or properties comprising the former Omaha & Grant Smelter facility or properties where waste from the Omaha & Grant Smelter had come to be located and describe any and all uses to which the property was put to during those periods.

4. If PGB subsequently transferred any of the property or properties identified above provide title documents showing the transfer of the property or properties. Additionally, provide any information you may have in regard to property use subsequent to sale of the property or properties by the City.

5. Provide any current or historical map you may have in regard to the Omaha & Grant Smelter facility.

6. Describe and, where available, provide maps that describe the physical characteristics of the Site, including but not limited to the following:

- a. Surface structures;
- b. Ground water wells;
- c. Ore treating facilities;
- d. Additions, demolitions, changes to the physical structures on or about the Site property during the period PBG owned the Site; and
- e. Slag piles, flue dust piles or waste dumps.

7. Identify and describe all tailings piles, tailings ponds, flue dust piles, waste rock dumps, and slag heaps at the Site that you have knowledge of. Include the following:

- a. The location of all former piles, ponds, dumps, and heaps;

- d. the release or migration of any hazardous substances, pollutants or contaminants as the result of any manufacturing or disposal practice or procedure conducted within the Site (e.g., burial of discarded drums or parts, disposal of waste oil or debris in landfills or pits, disposal of wastewater from bottle washing operations);
- e. any activities, including removal, disposal, redisposal, contouring, grading, excavating or otherwise affecting the size, shape and location of the slag or roaster piles;
- f. any sampling or analysis of water quality in the South Platte River;
- g. any sampling and analysis of waste material within the Site;
- h. monitoring of environmental conditions at the Site;
- i. describe any current or potential future uses of any property interest of the Respondent which is not for common carrier purposes. Include in this response information regarding any plans or discussions the Respondent has had with any party that may acquire the property interest in the future; and
- j. ownership, control, possession or use of any buildings, dwellings, fixtures or other structures within the Site.

10. Identify all corporate officers, directors, employees, agents or contractors that were involved in any of the functions listed in a. through j. of question 9 above and describe their roles in the performance of those functions.

11. Provide a list of any environmental or other reports you may have that relate to environmental conditions on or about the Omaha & Grant Smelter facility and also properties in the vicinity of the former Argo Smelter and Globe Smelter.

ENCLOSURE 2

NOTARIZED CERTIFICATE

I, _____, having been duly sworn and being of legal age, hereby state:

1. I am the person authorized by _____ to respond to the Environmental Protection Agency's (EPA's) request for information concerning the Vasquez Boulevard & I-70 Site located in Denver, Colorado.
2. I have made a complete and thorough review of all documents, information, and sources relevant to the request.
3. I hereby certify that the attached response to EPA's request is true, accurate, and complete and contains all information and documents responsive to the request.

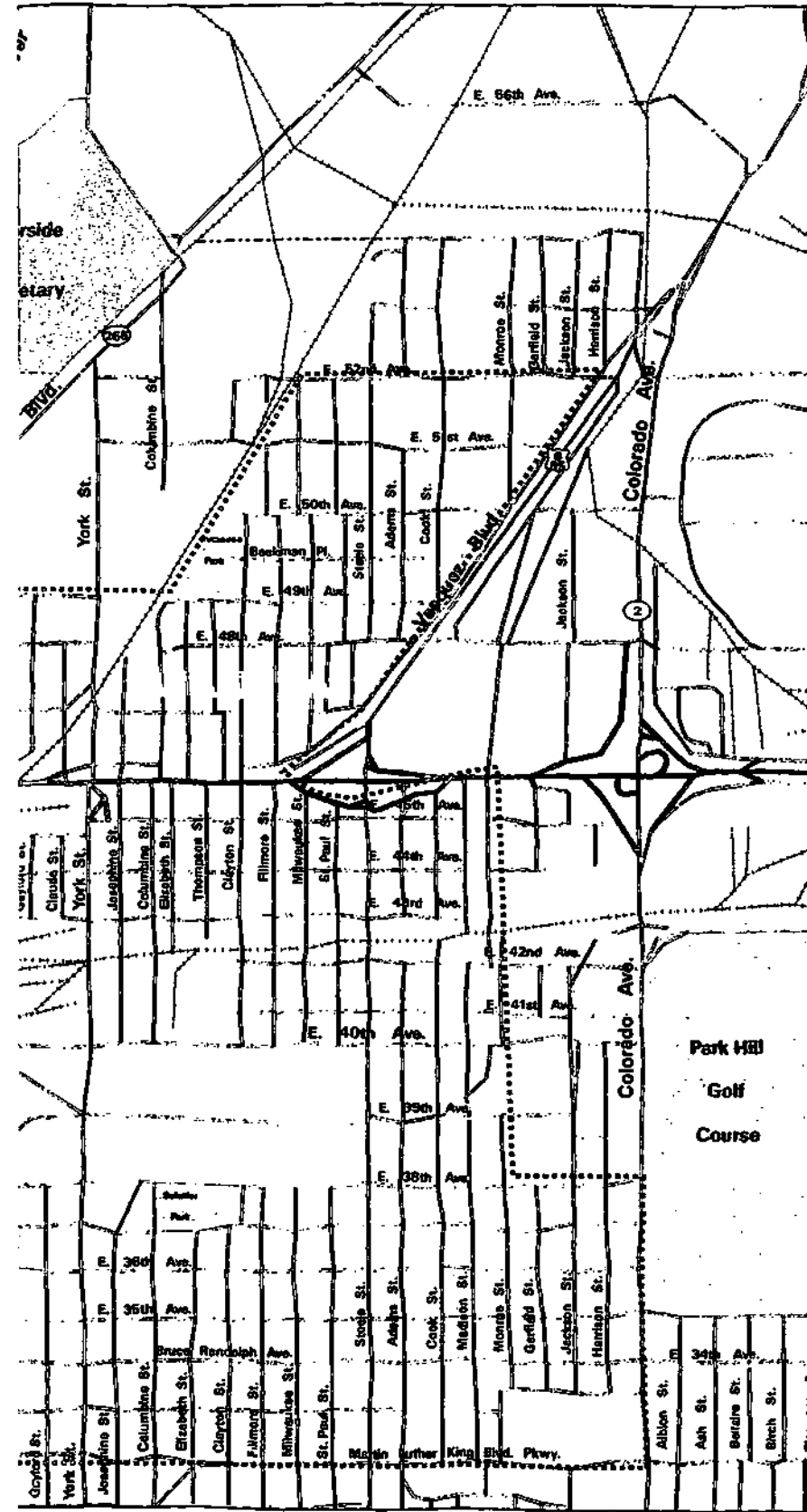
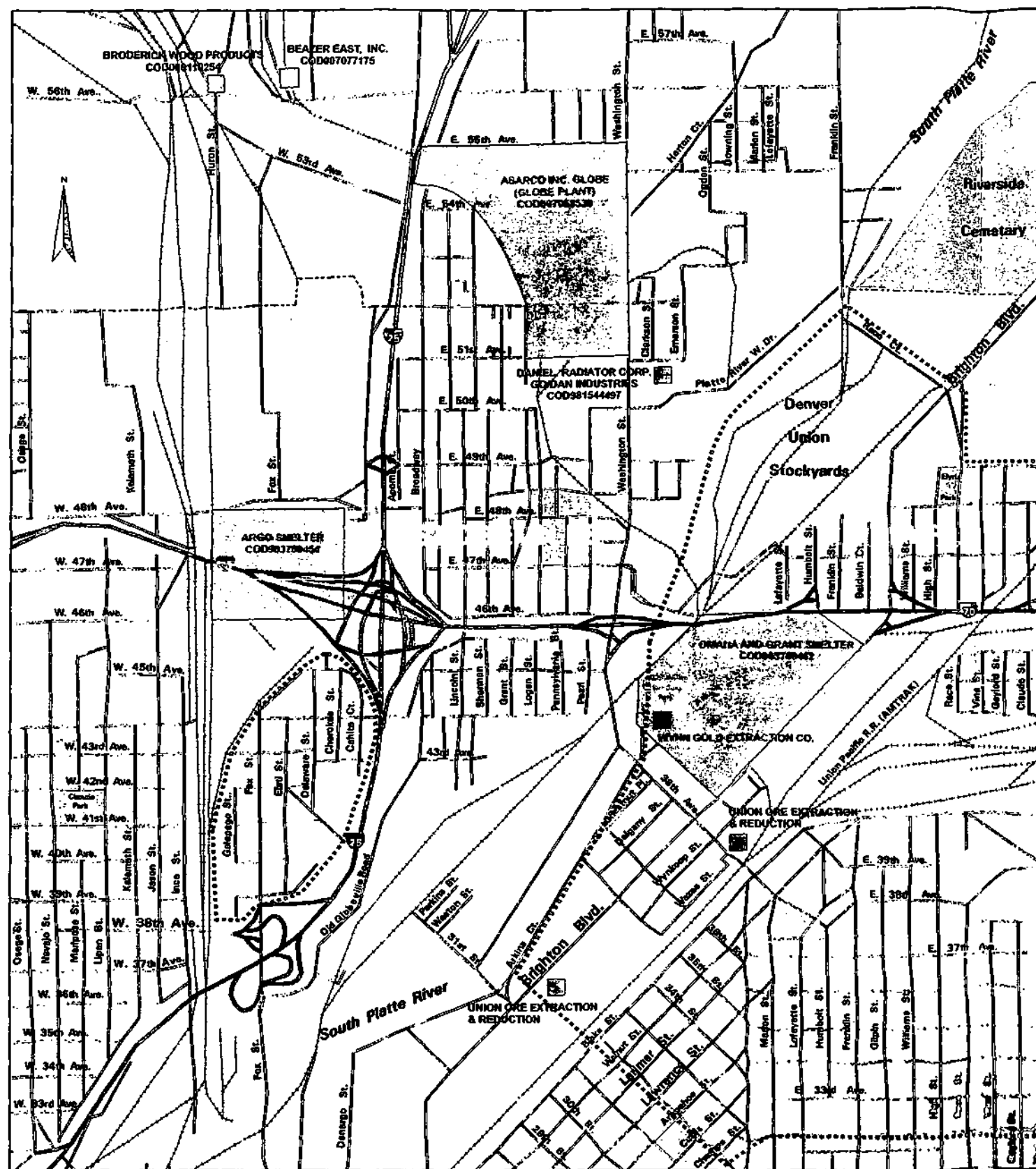
(SEAL)

(Signature) (Name, Title)

Subscribed and sworn to me
this ____ day of _____,
2001.

Notary Public

My Commission Expires _____
My address is _____



— Interstate
 — City Street
 - - - Railroad
 - - - County Line
 Neighborhood
 [] Park
 [] Stockyard
 [] Cemetery
 [] Hydrology
 Approximate Soil Sampling Boundary
 [] Approximate Facility Location
 [] Smelter Property

Prepared for:
 U.S. Environmental Protection Agency

Prepared by:
 ISSI, Inc.
 999 18th Street, Suite 1180
 Denver, CO 80202

FIGURE 1
 Site Map